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Plaintiff in pro per

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JUN 25 2008

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

James Alan Bush,

Plaintiff,

v.

Sunnyvale Department of Public
Safety, et al.,

Defendants.

Case No.: C 08-01354 (RS) JF

NOTICE OF MOTION AND MOTION FOR
ACCELERATED DISCOVERY

[Fed. R. Civ. P. Rules 7(b), 26(d)]

Magistrate Judge Richard Seeborg

NOTICE OF MOTION AND MOTION FOR ACCELERATED DISCOVERY

TO ALL DEFENDANTS AND THEIR RESPECTIVE COUNSEL:

Please take notice that on Wednesday, June 25th, 2008, at 9:30 AM,
or as soon thereafter as the parties may be heard, James Alan Bush,
Plaintiff in the above-entitled matter, will move this Court, at the
Robert F. Peckham Federal Building located at 280 South First Street,

1 Courtroom 3, 5th Floor, for an order permitting discovery in advance of
2 the Rule 26(f) discovery conference, and, in particular, asking this
3 Court to order the following within 10 days of issuance:

- 4 1. the name and, if known, the address and telephone number, of each
5 individual likely to have discoverable information – along with the
6 subject of that information – that you intend to use to support
7 your defenses;
- 8 2. a copy – or a description by category and location – of all
9 documents, electronically stored information, and tangible things
10 in your possession, custody, or control, that you intend to use to
11 support your defenses; and,
- 12 3. a response to plaintiff's interrogatories (attached).

13 This order is necessary to prevent further irreparable injury
14 and harm to the plaintiff by enjoining Defendant, Kathy Bickel, from
15 obstructing the due course of justice.

16
17 **GROUND FOR RELIEF**

18 Defendant, Kathy Bickel, has interfered with the discovery of
19 matters pertinent to Plaintiff's case by unlawfully detaining property
20 belonging to plaintiff, which contains evidence to be used in trial.

21 This willful act by the defendant constitutes retaliation for
22 the exercise of plaintiff's constitutional right to seek to redress
23 grievances in court; and, unless the defendant is ordered to comply
24 with her obligations under Rule 26(b)–in advance of the pretrial
25 conference–plaintiff will be severely compromised in his ability to
26 prosecute this action.

Given the unwillingness of the defendant to cooperate with the plaintiff where required by the Federal Rules of Civil Procedure in the past (see Exhibit "A" and "B"), plaintiff cannot afford to wait for the Rule 26(f) conference, the full 30 days for the defendant to respond to a request for mandatory disclosures or his interrogatories.

PRE-MOTION ATTEMPTS TO RESOLVE DISPUTE

Prior to bringing this motion, Plaintiff attempted to secure voluntary production of the property in question and a response to his requests for discovery, without the need for a motion and a court order.

Even though Plaintiff pointed out that complying with his requests was critical to avoid prejudicing his case, the defendant refused to agree to voluntary production (see attached Petition for Claim and Delivery Against Respondent, Kathy Bickel, and its supporting documents).

Petitioner: 

Dated: 6-25-08

MEMORANDUM OF POINTS AND AUTHORITIES

Court May Order Accelerated Completion of Discovery. Under Fed R Civ P 26(c)(1)(B), a court may set deadlines for completion of discovery. For example, a court may order accelerated completion of discovery, and further order that privileged documents inadvertently submitted on accelerated time schedule do not operate to waive privilege [see *Transamerica Computer Co. v. IBM Corp.* (9th Cir 1978) 573 F2d 646, 652].

Party May Move to Shorten Time for Response. If a party has been

1 refused a request to stipulate to shorten or extend the time to respond
2 to discovery demands, the party may move the court to modify the 30-day
3 deadline for response [Fed R Civ P 33(b)(2), 34(b)(2)(A), 36(a)(3)]. If an
4 extension of time to conduct discovery is desired that extends beyond
5 the discovery cutoff, a hearing on a motion, or trial, a party must
6 make a motion to extend the date, even if all parties stipulate to the
7 extension [Fed R Civ P 29(b)].

8 *Party May Move to Alter General Rule Prohibiting Discovery Prior to*
9 *Rule 26(f) Planning Meeting.* Normally, a party may not seek discovery
10 from any source prior to the Fed R Civ P 26(f) planning meeting absent
11 an agreement between the parties or a court order [Fed R Civ P 26(d)].
12 If unable to secure a stipulation to expedite discovery, a party may
13 thereafter move the court to order that certain discovery be expedited.

14 *Good Cause Based on Preliminary Injunction Standard.* It is possible
15 that good cause may also be established based on the standard
16 for issuing a preliminary injunction, though this standard has not
17 been applied in a California federal court to date. This standard
18 examines (1) irreparable injury in the absence of expedited discovery,
19 (2) probably of success on the merits, (3) some connection between
20 expedited discovery and avoidance of irreparable injury, and (4)
21 whether irreparable injury to the moving party in absence of expedited
22 discovery is greater than harm to non-moving party in allowing
23 expedited discovery [Yokohama Tire Corp. v. Dealers Tire Supply, Inc. (D
24 Ariz 2001) 202 FRD 612, 614].